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INJUNCTIONS — ACTS RESTRAINED — OVERSTATEMENT OF MORTGAGE DEBT IN NOTICE OF SALE AS GROUND FOR INJUNCTION. — A substantial overstatement of the mortgage debt was made by a mortgagee in a notice of sale given in a foreclosure by advertisement. *Held*, that a temporary injunction restraining the sale until the amount of the debt is ascertained may issue in the discretion of the court. *Ekeberg* v. *Mackay*, 131 N. W. 787 (Minn.).

In this case there is no purely equitable right of redemption to give equity an exclusive jurisdiction. *Cf. Alston* v. *Morris & Co.*, 113 Ala. 506, 20 So. 950. However, unless the sale were restrained, the mortgagee would be able to bid the amount of the indebtedness claimed, without having to pay to the sheriff for the mortgagor the excess over the actual debt. REV. LAWS OF MINN., 1905, § 4466. To redeem under the statute, the mortgagor would have to tender the amount for which the land sold. *Dickerson* v. *Hayes*, 26 Minn. 100, 1 N. W. 834. It is true that the mortgagor could afterwards recover the excess at law. *Spottswood* v. *Herrick*, 22 Minn. 548. And this seems an adequate remedy for the money loss. But meanwhile the statutory right to redeem at the lower price, for which, if the notice had been correct, the land would probably have sold, is lost to him. Money damages for the loss of an interest in land being inadequate, equity protects that right *in specie*. The opportunity thus afforded mortgagors to delay a sale is a danger which may be guarded against by a proper exercise of the court's discretion.

INNKEEPERS — DUTIES TO TRAVELLERS AND GUESTS — WHO ARE GUESTS. — The plaintiff, a traveller, went to the defendant's inn and arranged to leave his horse there over night. He bought a drink of whisky and a cigar and departed. The horse was stolen that night without any fault of the defendant. *Held*, that the innkeeper is not liable. *Ticehurst* v. *Beinbrink*, 129 N. Y. Supp. 838 (Sup. Ct., App. T.).

In England and most American jurisdictions, including New York, an innkeeper is an insurer of his guest's property. *Morgan* v. *Ravey*, 6 H. & N. 265; *Hulett* v. *Swift*, 42 Barb. (N. Y.) 230, aff. 33 N. Y. 571. See BEALE, INNKEEPERS AND HOTELS, §§ 183–185. There is a conflict of authority as to whether a traveller, merely by leaving his horse at the inn, becomes a guest. The principal case, which seems to represent the sounder view, holds he is not a guest. *Healey* v. *Gray*, 68 Me. 489. The cases *contra* argue that the compensation due the innkeeper for feeding the horse is sufficient to make the owner a guest. See *Yorke* v. *Grenaugh*, 2 Ld. Raym. 866, 868; *Mason* v. *Thompson*, 9 Pick. (Mass.) 280, 285. They admit that the rule would be otherwise if the property were inanimate and no compensation were to be paid. See *Russell* v. *Fagan*, 7 Houst. (Del.) 389, 394, 8 Atl. 258, 260; *Yorke* v. *Grenaugh*, *supra*, 868. Compensation, therefore, seems to be the basis of these decisions. That should make the innkeeper liable as a bailee for hire, but it hardly seems that the contract of bailment should make the bailor a guest when he himself neither boards nor lodges at the inn and does not intend to do so. *Ingallsbee* v. *Wood*, 33 N. Y. 577. The fact that the plaintiff bought drink, if it established the relation of innkeeper and guest, should not affect the result of the case, for the relation had ceased at the time of the loss. *Hoffman* v. *Roessle*, 39 N. Y. Misc. 787, 81 N. Y. Supp. 291. See *Clark* v. *Ball*, 34 Colo. 223, 82 Pac. 529.

INSURANCE — WAIVER OF CONDITIONS — CONDITION FOR PARTIAL FORFEITURE. — A sick benefit policy provided that the insured's failure to notify the insurer of the illness within a certain time should limit the latter's liability to one-fifth of the amount it would otherwise have to pay. After breach of this condition the insurer denied any liability. *Held*, that the insurer may set

up the breach of condition as to notice. *Dewey* v. *National Casualty Co.*, 72 N. Y. Misc. 23, 129 N. Y. Supp. 136 (Sup. Ct.).

One reason for the doctrine of waiver in insurance law is that forfeiture would otherwise be occasioned to the insured. See *Graham* v. *Security Mutual Life Ins. Co.*, 72 N. J. L. 298, 303, 62 Atl. 681, 683. A limitation of the amount of indemnity, as in the principal case, is not an attempt to proportion the insurer's liability to the loss incurred by the insured, but is clearly a provision for a partial forfeiture. If the case is analogous to cases of total forfeiture for breach of condition, it is opposed to the current of authority. *Brink* v. *Guaranty Mutual Accident Association*, 28 N. Y. St. Rep. 921, 7 N. Y. Supp. 847; *Metropolitan Accident Association* v. *Froiland*, 161 Ill. 30, 43 N. E. 766. Nor is it in accord with cases of partial forfeiture for breach of analogous conditions. *Thompson* v. *St. Louis Mutual Life Ins. Co.*, 52 Mo. 469.

INSURANCE — WAIVER OF CONDITIONS — CONDITION POSTPONING LIABILITY. — A policy of fire insurance postponed the insurer's liability to pay to the end of a certain period of time. Within that period, the insured brought suit. Before this action, but after the fire, the insurer had denied liability on the ground that the insured possessed no insurable interest in the premises. *Held*, that the action is premature. *Irwin* v. *Ins. Co. of North America*, 116 Pac. 294 (Cal., Ct. App.).

This case is opposed to two legal theories. The first is the insurance doctrine of waiver and estoppel. In applying that doctrine, a distinction might have been taken between absolute defenses and conditions which merely postpone liability; for only the former produce the forfeitures abhorred by insurance law. However, no such distinction has been made. *State Ins. Co.* v. *Maackens*, 38 N. J. L. 564; *Edwards* v. *Fireman's Ins. Co.*, 43 N. Y. Misc. 354, 87 N. Y. Supp. 507. The principal case also infringes the somewhat doubtful doctrine of anticipatory breach of contracts. *Hochster* v. *De la Tour*, 2 E. & B. 678. *Contra*, *Daniels* v. *Newton*, 114 Mass. 530.

INSURANCE — WAIVER OF CONDITIONS — INSURER'S COURSE OF DEALING PRIOR TO ISSUANCE OF POLICY. — A complaint on an annual credit insurance policy stated that the plaintiff, the insured, had broken the condition for proof of loss, but that for a number of years the defendant had written similar policies for the plaintiff and had never made full compliance with the condition necessary. *Held*, that the complaint is demurrable. *Shedd* v. *American Credit-Indemnity Co.*, 95 N. E. 316 (Ind., App. Ct.).

In at least three types of cases have waiver and estoppel been predicated upon an insurer's course of conduct relative to a condition, or another condition similar to the condition, subsequently broken by the insured. The dealings may have been between the insurer and insured under the very policy involved. *Hartford Life Ins. Co.* v. *Unsell*, 144 U. S. 439, 12 Sup. Ct. 671. The insurer's acts may have referred to conditions in concurrent policies issued to the same insured person. *Home Protection of North Alabama* v. *Avery*, 85 Ala. 348, 5 So. 143. Or the insurer may have been dealing with other policy holders. *Estes* v. *Ins. Co.*, 67 N. H. 462, 33 Atl. 515. *Contra*, *Haupt* v. *Phœnix Life Ins. Co.*, 110 Ga. 146, 35 S. E. 342. A possible fourth type involves the breach of a condition in a policy issued subsequently to the insurer's conduct. See *Ins. Co.* v. *Plato*, 23 Ohio Circ. Ct. Rep. 35. It differs from the other types in that the condition in the new policy may notify the insured that the insurer will enforce the condition. Such notice is effective. *Brown* v. *Pennsylvania Casualty Co.*, 207 Pa. St. 609, 56 Atl. 1125. But the insurer may have disregarded the condition in so many prior policies that its insertion in a subsequent policy is ineffective as notice. It might be held that such conduct is not alleged in the principal case. However, it professes to decide that there cannot be waiver and estoppel of the fourth type.